

STATE OF MICHIGAN
COURT OF APPEALS

JOSEPH MARIO RECCHIA,

Plaintiff-Appellant,

v

BOARD OF REGENTS OF THE UNIVERSITY
OF MICHIGAN, UNIVERSITY OF MICHIGAN
SCHOOL OF SOCIAL WORK, d/b/a
UNIVERSITY OF MICHIGAN
INTERDISCIPLINARY PROJECT ON CHILD
ABUSE & NEGLECT, and d/b/a FAMILY
ASSESSMENT CLINIC,

Defendants-Appellees.

UNPUBLISHED

February 25, 2000

No. 214885

Court of Claims

LC No. 97-016740-CM

JOSEPH MARIO RECCHIA,

Plaintiff-Appellant,

v

KATHLEEN COULBORN FALLER, JANE
MILDRED, CAROL A. PLUMMER, EDWARD
BERNAT, and SHARON GOLD-STEINBERG,

Defendants-Appellees.

No. 214901

Washtenaw Circuit Court

LC No. 97-004181-NO

Before: O'Connell, P.J., and Murphy and Jansen, JJ.

PER CURIAM.

Plaintiff appeals as of right from September 15 and September 21, 1998, orders granting summary disposition to defendant mental health professionals and their employer. Plaintiff filed two

lawsuits: one against the individual professionals in their personal capacity and one against their employers. The two suits were consolidated below and on appeal. We affirm.

Plaintiff filed this action against defendants who were expert witnesses in a previous child custody case that involved claims of child abuse made by the plaintiff's former wife against him. Following a motion hearing in that previous child custody case, the circuit court ordered an investigation by a medical professional into the allegations of abuse. The court in its order suggested defendants but gave the guardian ad litem assigned to the case the option of choosing another medical professional to investigate the claims. The guardian ad litem decided to use defendants.

In a letter, the guardian ad litem requested that defendants investigate the claims of abuse and prepare a report. The report was intended by the guardian ad litem to aid her in making recommendations to the court regarding visitation and other issues involved in the custody dispute. The guardian ad litem also indicated to defendants that the report "would likely be the subject of a court hearing." Defendants interviewed plaintiff, his ex-wife, and their child and recorded their findings and recommendations in a report. The report was distributed to the guardian ad litem, attorneys for the two parties, and an employee of the county child protective services department. Defendants concluded that plaintiff abused his daughter and that he should see her only during supervised visits. The court subsequently ordered a second examination, to be conducted by a different medical professional. It was ultimately determined that defendants' findings were unreliable and that the child abuse allegations were unsubstantiated.

Plaintiff then sued defendants, alleging violations of the Michigan Consumer Protection Act, fraud, breach of contract, ordinary and gross negligence, intentional infliction of emotional distress, and professional malpractice. Before these allegations could be argued, defendants moved for summary disposition asserting that they are immune from suit. Plaintiff countered with a motion for summary disposition on defendants' claims of immunity. Following a hearing the court granted summary disposition in favor of defendants under MCR 2.116(C)(7), concluding that defendants are immune from suit as witnesses acting in the course of judicial proceedings. On appeal, plaintiff argues that public policy against negligent social workers wreaking havoc on families necessitates the allowance of lawsuits such as this one and that courts have been reluctant to grant full immunity to those involved in the judicial process and that should included defendants.

This Court reviews the trial court's grant of summary disposition de novo. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995). Summary disposition of all or part of a claim or defense may be granted when a claim is barred because immunity is granted by law. MCR 2.116(C)(7).

Despite plaintiff's extensive efforts arguing that immunity should not be extended to defendants, it is well established that statements made by a witness in the course of a judicial proceeding are absolutely privileged provided they are relevant, material, or pertinent to the issues being tried. Our Supreme Court recently affirmed this principle, stating:

[W]itnesses who testify during the course of judicial proceedings enjoy quasi-judicial immunity. This immunity is available to those serving in a quasi-judicial adjudicative capacity as well as "those persons other than judges without whom the judicial process could not function." 14 West Group's Michigan Practice, Torts, § 9:393, p 9-131. Witnesses who are an integral part of the judicial process "are wholly immune from liability for the consequences of their testimony or related evaluations." *Id.*, § 9:394, pp 9-131 to 9-132, citing *Martin v Children's Aid Society*, 215 Mich App 88, 96; 544 NW2d 651 (1996). Statements made during the course of judicial proceedings are absolutely privileged, provided they are relevant, material, or pertinent to the issue being tried. See *Martin v Children's Aid Society, supra*; *Rouch v Enquirer & News of Battle Creek*, 427 Mich 157, 164; 398 NW2d 245 (1986); *Meyer v Hubbell*, 117 Mich App 699, 709; 324 NW2d 139 (1982); *Sanders v Leeson Air Conditioning Corp*, 362 Mich 692, 695; 108 NW2d 761 (1961). Falsity or malice on the part of the witness does not abrogate the privilege. *Sanders, supra*. The privilege should be liberally construed so that participants in judicial proceedings are free to express themselves without fear of retaliation. *Id.* [*Maiden v Rozwood*, 461 Mich 109, 133-134; 597 NW2d 817 (1999).]

In *Couch v Schultz*, 193 Mich App 292; 483 NW2d 684 (1992), the decision relied on by the circuit court in the present case, this Court granted witness immunity to a corrections officer who filed a misconduct report against two prisoners resulting in a finding of misconduct at a prison disciplinary hearing. *Id.* at 293. The issue in that case was not whether witnesses are granted immunity, but whether the prison discipline hearing was a "judicial proceeding" for which witness immunity would extend. *Id.* This Court did not consider or discuss the availability of witness immunity generally because "it is well settled in Michigan that statements made during the course of legislative proceedings, statements made during the course of judicial proceedings, and communications by military and naval officers are absolutely privileged." *Id.* at 294, citing *Raymond v Croll*, 233 Mich 268, 272-273; 206 NW 556 (1925).

Plaintiff has not questioned the relevancy, materiality, or pertinence of defendants' statements nor has he challenged either defendants' status as witnesses or that the underlying child custody suit was a judicial proceeding. Plaintiff has only argued that other jurisdictions extend limited immunity to some judicial participants and that the nature of child abuse allegations is such that any negligence by witnesses can cause considerable harm. Because Michigan law clearly extends immunity to witnesses in judicial proceedings, and defendants here are unchallenged as witnesses in a judicial proceeding, summary disposition was appropriately granted in this matter.

Plaintiff argues that public policy should be extended so that absolute immunity is not afforded to witnesses such as mental health professionals in child abuse matters. Plaintiff's argument, noting the significant damage that can result when negligence produces incorrect conclusions, is appealing in many ways. However, havoc and destruction in many forms result from so many types of judicial proceedings. In *Maiden, supra*, in which two cases were consolidated on appeal, the above cited passage was part of the Court's analysis affirming this Court's grant of summary disposition in favor of

the defendant in *Reno v Chung*, 220 Mich App 102; 559 NW2d 308 (1996). There, the plaintiff had sued the county medical examiner for a medical conclusion he reached in a homicide investigation that resulted in the plaintiff being charged with the murder of his wife. *Id.* at 104. The charges against the plaintiff were dismissed only after another pathologist and an otolaryngologist contradicted the medical examiner's damning and incorrect conclusion. *Id.* As evidenced by that case, the courts have extended witness immunity to professionals accused of negligence that resulted in harm equal to if not worse than that complained of by plaintiff.

In sum, witness immunity has been granted by the courts in Michigan without regard to the particular circumstances of the case. It has not been chipped away by the courts carving out exceptions. Accordingly, the circuit court's grant of summary disposition pursuant to MCR 2.116(C)(7) was appropriate because under Michigan law defendants, as witnesses in a custody proceeding, are granted immunity for statements made in connection with such a judicial proceeding. We decline to create the requested public policy exception to this clearly established principle.

Affirmed.

/s/ Peter D. O'Connell
/s/ William B. Murphy
/s/ Kathleen Jansen